INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	7
Conclusion	12

CITATIONS

Cases:	
Baumgartner v. *United States*, 322 U. S. 665	9, 11
Bindczyck v. *Finucane*, 342 U. S. 76	10, 11
Brenci v. *United States*, 175 F. 2d 90	8
Durland v. *United States*, 161 U. S. 306	8
Fournier v. *United States*, 58 F. 2d 3	9
Knauer v. *United States*, 328 U. S. 654	9, 10
Maney v. *United States*, 278 U. S. 17	11
Schneiderman v. *United States*, 320 U. S. 118	9
United States v. *Accardo*, 113 F. Supp. 783, affirmed, 208 F. 2d 632, certiorari denied, 347 U. S. 952	7, 8
United States v. *Ascher*, 147 F. 2d 544, certiorari denied, 325 U. S. 884	8
United States v. *Bischof*, 48 F. 2d 538	11
United States v. *Comyns*, 248 U. S. 349	8
United States v. *DeFrancis*, 50 F. 2d 497	8
United States v. *Etheridge*, 41 F. 2d 762	8
United States v. *Ness*, 245 U. S. 319	10, 11
United States v. *Sakharam Ganesh Pandit*, 15 F. 2d 285	11
United States v. *Saracino*, 43 F. 2d 76	8
United States v. *Siegel*, 152 F. 2d 614, certiorari denied, 328 U. S. 868	10
Statutes:	
Nationality Act of 1940, Sec. 338 (a) 54 Stat. 1158 (8 U. S. C. (1946 ed.) 738 (a))	2, 9
Naturalization Act of June 29, 1906, 34 Stat. 598, as amended by the Act of March 2, 1929, Chap. 536, Sec. 6 (b), 45 Stat. 1513	2

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 784

PETER CORRADO, A/K/A PIETRO CORRADO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 25–33; R. 525–530) is reported at 227 F. 2d 780. The opinion of the district court (Pet. App. 15–23; R. 499–508) is reported at 121 F. Supp. 75.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 33; R. 523) was rendered on December 16, 1955. By order of Mr. Justice Reed, the time for filing the petition for a writ of certiorari was extended to April 14, 1956 and the petition for a writ of certiorari was filed on March 22, 1956.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the court properly set aside a certificate of naturalization for fraud where the applicant, who filed his petition in New York, concealed from the immigration authorities numerous arrests and two convictions for misdemeanors in Michigan prior to the naturalization proceedings.

STATUTES INVOLVED

The Naturalization Act of June 29, 1906, 34 Stat. 598, as amended by the act of March 2, 1929, Chap. 536, Section 6 (b), 45 Stat. 1513 [in effect when petitioner was naturalized in 1931], provided:

> Fourth. No alien shall be admitted to citizenship unless * * * (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. * * *

Section 338 (a) of the Nationality Act of 1940, 54 Stat. 1158 (8 U. S. C. (1946 ed.) 738 (a)) provided:

> It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section

301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured.

STATEMENT

Petitioner was admitted to United States citizenship by a decree entered by the United States District Court of the Eastern District of New York on August 18, 1931 (R. 4). On November 28, 1952, the United States Attorney filed a complaint in the District Court of the United States for the Eastern District of Michigan, alleging that such citizenship had been illegally and fraudulently procured and praying that the decree of naturalization be set aside (R. 3–6). The district court entered a judgement setting aside the 1931 decree which had made petitioner a citizen (R. 509–510), for reasons fully set forth in a lengthy opinion (R. 499–508; 121 F. Supp. 75). The Court of Appeals affirmed (R. 523).

The facts found by both the district court and the Court of Appeals are as follows:

After his arrival in the United States in 1921, petitioner, a native of Italy, lived in Detroit, Michigan, until June 1, 1929. At that time he moved to New York City where he lived until

shortly after August 18, 1931, the date of his naturalization (R. 321–325).

In June 1929, petitioner filed an Application for a Certificate of Arrival and Preliminary Form for Petition for Citizenship in New York City (Gov. Ex. No. 1, R. 478–480; R. 47–48). The application was signed by him, but the answers were not in his handwriting (R. 42–43, 53). Question #29 of this Form asked (R. 479):

> Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? If so, give particulars.

In response thereto petitioner stated: "No". At the conclusion of the form was a certification which petitioner signed that the facts given in the application were true (Gov. Ex. No. 1, R. 479, 480). Thereafter on May 18, 1931, he filed his petition for naturalization (Gov. Ex. No. 2, R. 483), and was naturalized on August 18, 1931 (R. 4). Immediately thereafter he returned to Detroit where he is presently residing (R. 321–325, 356; Gov. Ex. No. 1, R. 478).

At the time petitioner filed his petition for naturalization in 1931, he had had two convictions for misdemeanors, one on June 25, 1923 for disturbing the peace (R. 94, 142, 488) and one in August 1927 for frequenting a gambling place (R. 143, 488). He also had numerous arrests as follows:

Date	Charge	Result	Record
3/13/24	Murder	Dismissed on writ	(R. 154, 201)
3/24/24	Felonious assault	Dismissed	(R. 142)
7/20/24	Armed robbery	Dismissed	(R. 234, 497)
9/25/24	Armed robbery	Dismissed	(R. 229-230)
11/7/24	Investigation	Released on bail; bail forfeited—no disposition.	(R. 488, 491, 496)
1/13/25	Armed robbery	Dismissed	(R. 497)
1/16/25	Violation of Dyer Act	Turned over to U. S. Marshal	(R. 142)
4/28/25	Armed robbery	Dismissed	(R. 232, 280-281)
8/6/25	Armed robbery	Dismissed	(R. 142, 281)
3/30/26	Carrying concealed weapon.	Discharged	(R. 142)
4/13/27	Carrying concealed weapon.	Discharged	(R. 143)
2/19/29	Murder	Discharged, subsequently indictment returned 3/24/31; nolle prosed.	(R. 143,[1] 189, 309-312, 354, 355)

[1] After petitioner's return to Detroit in 1931 and subsequent to his naturalization, he was arrested on October 28, 1931 on the 1929 murder charge and on December 10, 1931, as a fugitive (R. 143-144, 312, 498). The charge was eventually dropped (R. 312-313).

At the denaturalization hearing, United States naturalization examiner White, who had worked in that capacity in New York City from 1929 to 1933, testified that he had no independent recollection of examining petitioner as to the application and petition for citizenship, but that his handwriting on the application indicated that he had examined petitioner on May 18, 1931; that the check marks thereon indicated that he questioned petitioner about the general subject matter involved; that he placed the designations "NCR" and "RE" on the petition for naturalization, the latter indicating that petitioner could read English and the former indicating that petitioner told him on examination that he had no criminal record. Mr. White also indicated on the form that depositions had to be taken in Michigan (R.

59–67; Gov. Ex. No. 2, 483–484).[1] The final examination was conducted by another examiner who is now deceased (R. 175, 177).

Petitioner testified that he hired persons in the business near the courthouse to prepare his forms because "it was too deep for" him (R. 429, 430). The person who assisted him in the preparation of the form asked him the questions thereon before he filled them in. When that person asked him about question # 29 concerning arrests and convictions, petitioner said the following occurred (R. 431):

> So I told him, I said, "I was arrested for investigation, and I pay a fine of $25, fine for disturbing the peace."
>
> So he told me, he said, "Well, that is $25 fine for disturbing the peace. That is nothing. That is misdemeanor." He said, "The others—did you ever serve time for anything?"
>
> I said, "No."
>
> Well, he said, "That is all. As long as you didn't serve no time, that is not necessary."

Petitioner said that when he appeared before Mr. White and subsequently before the examiner who made the recommendation, they did not ask him any questions, except that Mr. White merely asked him if everything in the application was true and petitioner said "Yes" (R. 434–437).

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[1] The proceedings do not indicate the result of such depositions.

The trial court refused to credit petitioner's testimony (Pet. 19) and concluded that petitioner "deliberately falsified his position with the intent of misleading the examiner", that the false statements were material, and that the government had relied upon them (Pet. 19).

ARGUMENT

1. Petitioner's basic contention is that his concealment of his arrests does not establish fraud because, having been convicted only of minor misdemeanors, he might have been admitted to citizenship despite the arrest record. It is clear, however, that an arrest record such as petitioner's, which included an arrest for a murder which was the subject of a recent indictment not yet disposed of, was a material fact of which the immigration authorities should rightly have been informed. The investigation of a person with such a record in a district other than that of naturalization would obviously have been very different from the investigation of a person such as petitioner represented himself to be, *i. e.* a person with no arrests at all. The result of an investigation on the true facts might well have resulted in denial of citizenship and, at the very least, would have resulted in postponement pending disposition of the murder charge. The case on the fraud aspect is strikingly similar to *United States* v. *Accardo,* 113 F. Supp. 783 (D. N. J.), affirmed, 208 F. 2d 632 (C. A. 3), certiorari denied, 347 U. S. 952, except that

here petitioner's arrest record was longer and the charges more serious.

As the *Accardo* decision illustrates, there is nothing novel in the ruling of the court below that the issue on fraud is not whether citizenship would ultimately have been granted, but whether an applicant lied "concerning a material fact which, if revealed, might have prevented his acquisition of citizenship" (Pet. App. 31). In addition to the *Accardo* decision, numerous other courts have held concealment of arrests, convictions, and the like to be adequate grounds for denaturalization for fraud. *Brenci* v. *United States*, 175 F. 2d 90 (C. A. 1); *United States* v. *Ascher*, 147 F. 2d 544 (C. A. 2), certiorari denied, 325 U. S. 884; *United States* v. *DeFrancis*, 50 F. 2d 497 (C. A. D. C.); *United States* v. *Saracino*, 43 F. 2d 76 (C. A. 3); *United States* v. *Etheridge*, 41 F. 2d 762 (D. Ore.). Although, in this connection, the court below said that "it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case" (Pet. App. 31), actually, the standard which a criminal case requires was met in this case. In crimes involving fraud, such as conspiracy to defraud or mail fraud, it is not necessary to show that anyone was actually defrauded; it is enough that a defendant have the intent to defraud and takes action to put his intent into effect. See *United States* v. *Comyns*, 248 U. S. 349; *Durland* v. *United States*, 161

U. S. 306; *Fournier* v. *United States*, 58 F. 2d 3 (C. A. 7).

2. There is thus nothing in the decision below which departs from the rule that fraud in the procurement of naturalization must be proved by "clear, unequivocal and convincing evidence", as required by this Court in *Baumgartner* v. *United States*, 322 U. S. 665, and *Schneiderman* v. *United States*, 320 U. S. 118. The concealment of the record was thoroughly proved. The materiality of that record was clear. Nothing in the decisions of this Court prevents a court from discrediting the testimony of an interested witness whose demeanor the trial court found to be evasive (see Pet. App. 18). The evidence in this case meets the standards fixed by this Court which were fully applied by the courts below.

3. Petitioner's attack (Pet. 9–10) upon the denaturalization decree, which was based on failure to reveal arrests and convictions, as involving intrinsic fraud and hence being improperly granted under Section 338 (a) of the Nationality Act of 1940 (*supra*, pp. 2–3) is without substance. The type of fraud here proved is ground for denaturalization, whether it be denominated intrinsic or extrinsic. As this Court said in *Knauer* v. *United States*, 328 U. S. 654, 671–673:

> * * * [W]e need not consider in this case what the historic powers of equity might be in this situation. For Congress has provided that fraud is a basis for cancellation of certificates of naturalization in pro-

> ceedings instituted by the United States. The legislative history of that enactment shows that false swearing was one of the evils included in the statutory grounds for denaturalization. That power was granted to give added protection against fraud committed on the naturalization courts. * * * *Though the making of a false oath be called intrinsic fraud* (see *United States* v. *Throckmorton*, [98 U. S. 61]), *it is within the reach of the statute.* [Emphasis supplied.]

Any other result would defeat the purpose of the denaturalization statute which is not limited in its literal application to any special class of fraud. See *Bindczyck* v. *Finucane*, 342 U. S. 76; *United States* v. *Ness*, 245 U. S. 319, 325; *United States* v. *Siegel*, 152 F. 2d 614 (C. A. 2), certiorari denied, 328 U. S. 868. Fraud in concealing arrests immediately prior to naturalization is particularly analogous to the fraud in the oath of allegiance involved in *Knauer*, for here, as in that case, there was no real opportunity for the naturalization authorities or the court to examine into the fraud.

4. Petitioner urges (Pet. 10–12) that the doctrine of *res judicata* applies to the denaturalization judgment in that the issue of petitioner's good moral character was adjudicated in the naturalization proceeding.

Since the findings of fraud are fully supported, there is no occasion in this case to reach the issue

raised by petitioner as to the finding that the decree was also subject to cancellation for illegality in that petitioner had not in fact been a person of good moral character during the years preceding naturalization (R. 506–507). It may be noted, however, that in *United States* v. *Ness*, 245 U. S. 319, this Court held that a certificate of naturalization could be set aside as illegally entered, even though the government had entered an appearance and raised the very objection later presented as grounds for denaturalization. It held that Sections 11 and 15 of the Act of June 29, 1906 (34 Stat. 596), which were embodied in 8 U. S. C. (1946 ed.) 734 (d) and 738 (a), "were designed to afford cumulative protection against fraudulent or illegal naturalization" (245 U. S. at 327). See also *Bindczyck* v. *Finucane, supra; Maney* v. *United States*, 278 U. S. 17; *Baumgartner* v. *United States*, 322 U. S. 665, 675. In arguing that the decree of naturalization is *res judicata* on the issue of good moral character, petitioner relies on cases where the denaturalization courts have refused to relitigate a question which had actually been in issue before and determined by the naturalization court. *United States* v. *Sakharam Ganesh Pandit*, 15 F. 2d 285 (C. A. 9); *United States* v. *Bischof*, 48 F. 2d 538 (C. A. 2). This is not the situation here for petitioner's concealment of his prior convictions and arrests—the facts on which the finding that he was not in fact a person of

good moral character rests—were not before or determined by the naturalization court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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